***HON'BLE SRI JUSTICE P.S. NARAYANA**

+WRIT PETITION NO.2482 of 2006

%23-11-2006

#K.Chakrapani.

..... PETITIONER

VERSUS

$The District Level Committee,
represented by its Chairman,
East Godavari District and another.

.....RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for Petitioner**:** Smt. N.Shoba.

^Counsel for Respondents: G.P. for Panchayat Raj and Rural Development.

? Cases referred
-NIL

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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DATED 23.11.2006

Between:
K.Chakrapani .. PETITIONER

versus

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WRIT PETITION NO.2482 of 2006

ORDER:

The counsel on record made a request to dispose of the Writ Petition itself finally though the matter is appearing under the caption of interlocutory. Hence, the Writ Petition is being disposed of finally.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in not returning the D.Ds., for Rs.20,32,851/- (EMD + 25% knocked bid amount) deposited by the petitioner for participating in the sand quarry auctions pursuant to Notification No.3933/2005/A12, dated 28.9.2005 for reach No.42, Gopalapuram as arbitrary, illegal, unjust and violation of A.P. Minor Mineral Concession Rules, 1966 and pass such other suitable orders.

3. Smt. N.Shobha, learned counsel representing the writ petitioner had taken this Court through the respective pleadings of the parties and would contend that in the facts and circumstances of the case, the stand taken by the respondents for refund of the amounts deposited through the D.Ds., cannot stand for scrutiny. The counsel also had taken this Court through Rule 9-H of A.P. Minor Mineral Concession Rules, 1966, referred to supra, and would contend that in the light of the facts, the respondents have no right to forfeit the amount.

4. On the contrary, the learned Assistant Government Pleader for Panchayat Raj representing the respondents had taken this Court through the pleadings in the counter affidavit and would submit that the petitioner having knowledge of the pendency of the Writ Petition, made the payment and subsequent thereto had not complied with the subsequent steps to proceed with in accordance with the Rules and in view of the same, the respondents are justified in refusing to refund the

amount in question. The learned counsel also had drawn the attention of this Court to the interim order made by this Court on 15.6.2006 and would contend that in pursuance thereof, the representation dated 24.1.2006 was disposed of in accordance with law, and in view of the same the Writ Petition is liable to be dismissed.

5. Heard the counsel.

6. It is stated that the District Level Committee had published a Notification No.3933/2005/A12, dated 28.9.2005 for holding of auctions of sand quarries situated in East Godavari District, Reach No.42 of Gopalapuram from Kms. 30/0 to 44/0 Kms was notified for Rs.39,02,739/- for participation in the auction, the petitioner deposited 25% quarry once notified as the earnest money deposit. The petitioner deposited Rs.9,80,000/- as EMD by way of demand draft with his tender application and participated in the auctions and the petitioner became the highest bidder for Rs.81,22,444.99 ps. As per the tender notification and Rule 9H, the petitioner has to deposit 25% of the knocked down amount within 24 hours or on next working day. Accordingly, the petitioner deposited Rs.10,52,851/- in compliance of the same though confirmation order were received to the other reaches, but no confirmation orders were issued to Reach No.42 Gopalapuram. It is also further stated that the petitioner represented for issuance of confirmation orders. If confirmation orders are issued, the petitioner will have to deposit the balance 75% of the knocked down amount on or before the dates specified therein. In spite of request by a representation dated 9.11.2005 that the peak period for transportation of sand and laying of ramp is only in November, December and January, the petitioner learnt that certain Writ Petitions are pending before this Court. It is stated that without disclosing the same, auctions are conducted and any order of confirmation issued beyond this period , it will be a loss to the petitioner. Since the petitioner had taken loans from various people with high interest, he is

unable to pay the interest and hence, he requested to return the D.Ds., deposited by him. It is also further stated in paragraph 5 of the affidavit that the petitioner had made further representation dated 18.1.2006 requesting the authorities to return his D.Ds., deposited for the auction conducted on 25.10.2005, and the petitioner had deposited Rs.9,80,000/- as EMD + 25% knocked down amount as Rs.10,52,851/-. It is stated that the period of auction was notified from 16.10.2005 to 30.9.2006, whereas for all the other Reaches, agreements are entered and operations are in full swing, but as regards the petitioner's quarry is concerned, till date no confirmation order is issued. It is stated that peak sand quarry periods are only November, December, January and February and flood season begins from June and Sand quarry operations have to be closed from April onwards as the first flood affected ramp is Gopalapuram ramp. Even if confirmation orders are issued, it will be at a huge loss to the petitioner. Hence, he requested for return of the D.Ds. The petitioner's further enquiry revealed that the Writ Petitions pending in this Court are only with regard to Gopalapuram ramp regarding the boundary dispute between East Godavari District and West Godavari District. It is also stated that in pursuance of the direction of the Court, a survey was conducted for fixation of boundaries of the Districts and in the said survey, the entire area notified had fallen into the boundary of West Godavari District and there is no sand bearing area and therefore the petitioner requested to return the D.Ds., with interest. It is also further stated that to his surprise, the petitioner received a telegram on 19.1.2006 from the District Panchayat Officer to approach his office with required amount to get the confirmation orders for Reach No.42, Gopalapuram, as otherwise the EMD deposited will be forfeited under the provisions of 9H(3) Rules. On receipt of the telegram, the petitioner had again represented on 24.1.2006 that since 25% of amount was already

deposited on quarry, the very conduction of auction is illegal inasmuch as the Writ Petitions are pending and also the area was fallen into West Godavari District. It is stated that there is no sand bearing area in Gopalapuram as notified. It is stated that his DDs be returned as he cannot quarry the sand as the season has gone. However, the authorities instead of canceling the auction, kept the contractors in dark. It is also further stated that till today the D.Ds., deposited by the petitioner Rs.9,80,000/- as EMD +25% knocked down amount are not returned to him. The delay in issuing confirmation order is only by the authorities, but not on the part of the petitioner as he had already deposited the amounts. Having notified the period from 16.10.2005 to 30.9.2006, the authorities should have issued confirmation orders on 26.10.2005, but they did not do so in view of the stay order granted by this Court in various Writ Petitions. Hence, conducting of auction itself is arbitrary, illegal and in violation of court orders. The petitioner had made several representations starting from 26.10.2005, 18.11.2005, 9.12.2005, 18.1.2006 and 24.1.2006 to return his D.Ds., but no action was taken by the authorities to return the same. In such circumstances, the petitioner had filed the present Writ Petition.

7. As already referred to supra, in WPMP.No.3031/2006, this Court made the following order:

> "Heard the counsel. In view of the facts and circumstances of the case well explained, there shall be interim direction. The second respondent is directed to dispose of the representation dated 24.1.2006 in accordance with law within a period of six weeks from today".

It is stated that the above representation was disposed of by an order dated 9.9.2006 in ROC No.3933/2005/A 12 and the said order reads as hereunder:

> "In the ref 1st cited, Sri Kundula Chakrapani, s/o. Krishna Murthy, Undrajavaram, Tanuku Mandal, has represented that pursuant to the Notification No.3933/2005/A12

dt.28.9.2005, he participated in the Auction for Reach No.42-Gopalapuram and he became the highest bidder for Rs.81,22,444.99 ps., that he deposited Rs.9,80,000/- as EMD and again on 26.10.2005, he deposited the 25% of the bid amount of Rs.10,52,851/- by way of D.Ds., no confirmation order was passed though confirmations were issued to other reaches, that earlier he represented on 18.11.2005 that delay in issuing confirmation order will cause loss and damage, again by his representation dt.9.5.2005, that the peak period for transportation and for laying of ramp is only November, December and January, further that the writ petitions are pending on the file of the Hon'ble High Court of A.P. and in spite without disclosing the same, auctions were conducted and finally he requested for return of Demand Drafts deposited by him.

Thereupon, the representation dated 24.1.2006 was put in the District Level Committee (Sand Auctions), East Godavari held on 6.2.2006 and the Committee was took a decision to the effect to forfeit the EMD and subsequent amounts paid by the bidder since he failed to take up the leasehold rights for the said reach within the time stipulated. Accordingly, as per the decision of the District Level Committee (Sand Auctions), the EMD and subsequent amount paid by the bidder which comes to Rs.20,39,718/- was forfeited vide Procgs. Roc. No.3933/2005/A12, dt. 10.2.2006 duly quoting the representation dated 24.1.2006 of the individual vide ref. 8th cited.

Hence, the said Sri Kudapa Chakrapani, s/o. Krishna Murthy, Undrajavaram, Tanuku Mandal is hereby informed that his representation dated 24.1.2006 was placed before the District Level Committee (Sand Auctions), East Godavari held on 6.2.2006 and the same was disposed in accordance with law. However, as per the directions of the Hon'ble High Court of A.P., Hyderabad issued vide ref. 2nd cited, the same is reiterated".

8. In the counter affidavit filed by the 2nd respondent it is stated that

the writ petitioner participated in the auction for the said reach and as he offered an amount of Rs.81,22,444.99 ps., he stood as highest tenderer in respect of the said reach. It is also stated that initially a Notification was issued in Roc No.3756/2005/A12, dt. 13.9.2005 for holding sand auctions to the 15 sand packages and 10 sand reaches situated in East Godavari District and according to the said notification, auction was conducted on 28.9.2005 for 14 sand packages and 10 sand reaches for one sand package namely Package No.7 i.e., Mandapalli/Vadapalem/Vanapalli-stay granted by this Court and for that auction could not be held), the other 10 sand packages and 2 sand reaches have been confirmed by the District Level Committee (Sand Auctions) East Godavari and the remaining i.e., 4 packages and 8 reaches have again decided to put for re-auction (including Sand Reach No.42) since considerable bid amount had not been offered by the bidders who participated in the 1st phase auction held on 28.9.2005. It is also stated that aggrieved by this, certain bidders, i.e., Kundula Ganapathi Rao, Teeparru, West Godavari District and 3 others have approached this Court in WP No.21535 of 2005 on the plea that the reaches have not been confirmed by the authorities even though they have offered amounts more than the upset price amount. Considering the submissions made by the bidders, this Court had granted interim orders on 4.10.2005 directing the respondents subsequent auction may go on but not confirm the same. Accordingly, 2nd phase auction was held on 25.10.2005 as per the schedule duly announcing the fact that auction has only been conducted, but not confirmed at present as per the interim orders granted by this Court in WP No.21535 of 2005. The highest tenderer Kudapa Chakrapani has well known of the said fact and offered an amount of Rs.81,22,444.99 ps for the leasehold rights of Reach No.42-Gopalapuram for the year 2005-06. It is also stated that WP No.21535 of 2005, in which interim

orders were granted by this Court on 4.10.2005 directing that the auction may go on, but not confirm the auction was vacated on 7.12.2005 and hence the District Level Committee (Sand Auctions), East Godavari decided to accord leasehold rights in respect of Sand Reach No.42-Gopalapuram in favour of highest tenderer. It is also stated that one Velagala Sai Baba Reddy, R/o. Pekeru, Eragavaram Mandal, West Godavari District had filed Contempt Case No.1377 of 2005 on the ground that the authorities have not implemented the orders for conduct of joint survey by both the revenue authorities of East and West Godavari Districts. It is also further stated that during the auction year 2004-05, there is a dispute between the bidder of Reach No.42-Gopalapuram of East Godavari District and Velagala Saibaba Reddy, bidder of Siddantam reach of West Godavari District regarding fixation of reach boundaries. Thereupon one M.Lakshminarayana Reddy, bidder, Reach No.42-Gopalapuram had filed WP No.25055 of 2004. It is also submitted that joint survey was conducted on 9.6.2005 and thereupon both the bidders have agreed with the joint survey and thereafter the bidders had never raised any objection. Further, this Court also disposed of WP No.25055 of 2004 on 21.6.2005 directing both the revenue authorities of East and West Godavari Districts to conduct joint survey in the matter. Further, it was stated that on 7.12.2005 and 21.12.2005 both the revenue authorities of East and West Godavari Districts along with both the Assistant Directors of Survey and Land Records, concerned Mandal Revenue Officers and District Panchayat Officers attended for the joint survey proposed and completed the joint survey and fixed the boundaries in between the Reaches of Gopalapuram and Siddantam. It is also further stated that since WP No.21535 of 2005 was dismissed by this Court, legal opinion had been called for from the Government Pleader for Panchayat Raj vide fax message Roc No.3933/2005/A12, dated 9.1.2006 and thereupon, the Government Pleader for Panchayat Raj

had issued clarification that 'after going through the judgment in WP No.21535 of2005 and affidavit in CC No.1377 of 2005, since there is no stay with regard to the confirmation of auction in favour of the highest bidder for Reach No.42-Gopalapuram, and as the order of this Court had been complied with by conducting joint survey, they may confirm the auction in favour of highest bidder as per the rules made in GO Ms.No.1, I&C, Department, dated 1.1.2001'. Accordingly, the bidder has called for by way of issuing a telegram on 18.1.2006 to get the confirmation orders duly paying the other required amounts, such as lease agreement charges, 2% security deposit amount and income tax as applicable as notified in the notification issued in Roc No.3933/2005/A12, dt. 28.9.2005, but the petitioner has not respondent to the said telegram and did not come forward to take up the leasehold rights. It is stated that due to pending of WP No.21535 of 2005 and CC No.1377 of 2005, confirmation could not be given to the petitioner even though he made representations, but after receipt of clearance in WP No.21535 of 2005 and after receipt of clarification from the Government Pleader in CC No.1377 of 2005, the respondents were ready to accord confirmation in favour of the petitioner, but the petitioner, with a view to evade the payment of bid amount, has not respondent for receipt of confirmation orders. Therefore the entire matter was placed before the District Level Committee (Sand Auctions), East Godavari and after thorough discussions held in the matter, the District Level Committee (Sand Auctions) had resolved in its meeting held on 6.2.2006 to forfeit the EMD and subsequent amounts paid by the petitioner, which comes to a tune of Rs.20,39,718/-. Accordingly, the EMD and subsequent amounts paid by the petitioner which comes to a tune of Rs.20,39,718/- in respect of according of leasehold rights of Reach No.42-Gopalapuram for the year 2005-06 was forfeited by its Proc.Roc No.3933/2005-A12,

dt.10.2.2006. It is also further stated that the representations of the petitioner dated 24.1.2006 has been considered by the District Level Committee in its meeting dated 6.2.2006 and decided to forfeit the amounts paid by the petitioner and the proceedings dated 10.2.2006 was issued and communicated to the petitioner.

9. As can be seen from the respective stands taken by the parties, it is clear that the petitioner had complied with the steps to be taken by him, but because the reasons beyond his control, the confirmation could not be made and hence the subsequent steps could not be taken. Rule 9H of the Rules referred to supra deals with deposit of lease amount for execution of lease agreement, which reads as hereunder:

> "(1) When the tender/bid is knocked down by the competent authority, the successful tenderer or bidder shall remit in a Zilla Parishad General funds a sum equivalent to 25% of the knocked down amount and submit the same to the District Panchayat Officer on the immediate next working day.
>
> (2) The successful tenderer/Bidder on receipt of the order of the confirmation shall remit the remaining 75% of the knocked down amount in the General Funds of the Zilla Parishad concerned on or before the dates specified in the order of conformation and submit the challans to the concerned District Panchayat Officer along with a security of 2% of the knocked down amount subject to the minimum of Rs.1,000/- (Rupees one thousand only) through postal savings account or bank guarantee certificate from any Nationalised Banks duly pledged in favour of Chief Executive Officer's of Zilla Parishad concerned and execute the lease deed in Form G-I on stamped paper as per the Registration and Stamp Act within a week from the date mentioned in the order of confirmation. The lease period shall commence with effect from the date of the execution of the lease deed. However, the confirming authority shall have the power to

condone the delay in payment of the 75% of the knocked down amount, not exceeding two weeks from the date of confirmation of sale.

(3) If the successful tenderer or Bidder fails to pay either 25% of the knocked down amount on the next working day or the remaining 75% of the knocked down amount within the specified time as mentioned in the confirmation order or extended period, the amount so far paid by the successful tenderer/bidder shall be forfeited to the Government. The confirming authority is competent to forfeit the deposits to the Government.

(4) In the event of default by the first successful tenderer or bidder, the competent authority may issue confirmation order in favour of the second or subsequent highest tenderer or bidder in descending order provided if he retains the 25% of the minimum bid deposited at the time of participating in the aution".

10. It is no doubt true that Rule 9-H(3) specifies that if the successful tenderer or Bidder fails to pay either 25% of the knocked down amount on the next working day or the remaining 75% of the knocked down amount within the specified time as mentioned in the confirmation order or extended period, the amount so far paid by the successful tenderer/bidder shall be forfeited to the Government and the confirming authority is competent to forfeit the deposits to the Government, but, this Sub-Rule (3) of Rule 9-H to be read along with Sub-Rules (1) and (2) and on a careful scrutiny of the respective stands taken by both the parties, this Court is satisfied that the writ petitioner made representations for return of the demand drafts repeatedly for the reason that by virtue of the litigation inasmuch as further steps could not be taken by the Government in this regard, the writ petitioner made such a request for refund of the demand drafts. Both in the light of the language of Rule 9-H referred to and also taking into consideration the

over all facts and circumstances, this Court is of the considered opinion that the action of the respondents in taking a decision to forfeit these amounts is contrary to the Rule referred to supra and also unjustified both in law and on the ground of equity especially in the light of the fact that in view of certain litigations pending on the file of this Court, inasmuch as further steps could not be proceeded with and also in the light of the specific stand taken in the counter affidavit, it would be just and appropriate to direct the respondents to refund the amounts covered by the demand drafts referred to in the affidavit filed in support of the writ petition to the petitioner and this exercise of refund to be completed within a period of four (04) weeks from the date of receipt of a copy of this order. In view of the same, the Writ Petitioner is bound to succeed.

11. Accordingly, the Writ Petition is hereby allowed. There shall be no order as to costs.

23.11.2006

SSR

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